IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

MFA.No. 16 of 2007()

TA.67/1999 of RAILWAY CLAIMS TRIBUNAL, ERNAKULAM
.....

APPELLANT: (RESPONDENT IN RCT):

UNION OF INDIA,
REP. BY THE GENERAL MANAGER,
CENTRAL RAILWAY, MUMBAI.

BY ADV. SRI.M.C.CHERIAN,SR.SC.,RAILWAYS

RESPONDENTS: (APPLICANTS IN RCT):
---

1. KANJIRATHANKUNNEL JOSEPH, S/O.XAVIER,
KANJIRATHANKUNNEL HOUSE, THERMALA, PARIKKALAM P.O.
KANNUR DISTRICT (KERALA), PIN-670 705.

2. MRS.ROSAMMA JOSEPH, W/O.JOSEPH,
KANJIRATHANKUNNEL HOUSE, THERMALA, PARIKKALAM P.O.
KANNUR DISTRICT (KERALA), PIN-670705.

BY

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.RAMACHANDRAN & S.SIRI JAGAN, JJ.

==========

M.F.A No.16 of 2007

==========

Dated this the day of February, 2007

J U D G M E N T

Siri Jagan, J.:

In this M.F.A., the Union of India, represented by the General Manager, Central Railway, Mumbai, has come up in appeal against the order of the Railway Claims Tribunal, Ernakulam Bench in T.A. No.67/99, by which the Tribunal has directed the appellant to pay to the respondents herein an amount of Rs.2 lakhs each, within 45 days from the date of receipt of a copy of the order, as compensation for death of their son, Shaji @ Jose Joseph, aged 27 years, who is stated to have died while travelling in a local train from Kasara to Kalyan in an untoward incident. The contention of the Railways is that the respondents have not succeeded in proving that their son, Shaji @ Jose Joseph, was a bonafide passenger in a train and

that he was killed in an untoward incident in the course of working a railway so as to become entitled to compensation. This contention is based on Section 124-A of the Railways Act, which provides for compensation on account of untoward incident in the working of a railway. The counsel appearing for the Railways submits that only a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident, would be entitled to compensation under Section 124-A of the Act. The contention is that all what the respondents had done in this case is to examine the 1st respondent, who had no personal knowledge about the incident, himself as a witness, in which he had only deposed about hearsay evidence regarding death of his son and there was no positive evidence to show that the son of the respondents was actually travelling in a train with a valid ticket. In support of this contention, the appellant relies on Annexure II

translation of the inquest panchanama, as also Annexure III certificate from the Railway Police Head Constable, as also the deposition of the 1st respondent herein as PW1 in the proceedings before the Tribunal. The counsel submits that there is no evidence whatsoever regarding a valid ticket possessed by the deceased and there was no evidence whatsoever to the effect that he was actually travelling in a train. On these contentions, the appellant would contend that the order of the Railway Claims Tribunal suffers from serious infirmities and therefore, the same is liable to be set aside holding that the respondents are not entitled to their claim in the application before the Tribunal.

2. We have considered the arguments of the learned counsel for the appellant and also perused the annexures produced along with the appeal memorandum.

3. "Section 124-A reads thus:

> "**124A. Compensation on account of untoward incident**.- When in the course of working a railway an untoward incident occurs, then whether or not there

has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

(a) suicide or attempted suicide by him;

(b) self-inflicted injury;

(c) his own criminal act;

(d) any act committed by him in a state of intoxication or insanity;

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.- For the purposes of this section, "passenger" includes -

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."

Going by the above quoted section what the respondents had to prove before the tribunal was that their son died in an untoward incident in the course of working a railway other than those

excepted in the proviso.

4. Annexure I is the application submitted by the 1st respondent before the Tribunal, in which it is specifically stated by the 1st respondent that on 1.8.1998 at about 8.35 a.m. Shaji @ Jose Joseph was travelling by a local train from Kasara to Kalyan and when the train reached between Kasara and Karadi railway stations, he accidentally fell from the train and during the fall, his head hit against an electric post sustaining injuries to which he succumbed. It is also stated that the railway ticket was lost during the accident and it could not be traced out. In Annexure II inquest panchanama, the provisional conclusion of the person who prepared the inquest report is as follows:

> "Hence we panchas and police are of opinion that death of the said deceased would have been caused in Railway accident after sustaining the deep head injuries and cover of the head being broken and other injuries over the body of the deceased thereby large quantity of blood being strained from the body of the deceased."

In Annexure IV deposition of the 1st respondent herein, the father of the deceased, it has been

specifically stated that at time of accident, his son was an employee of the National Garments at Bhandup in Mumbai. He further stated that as per the information received by him from a friend of his son, while his son was travelling from Kasara to Kalyan in Mumbai, he fell down by hitting against the post fixed by the side of the Railway line consequent to which, his son died. In cross examination of the 1st respondent as PW1, he deposed as follows:-

> "I heard about the possession of a journey ticket at the time of death of Jose, from Mr.Manoharan of Taliparamba and he is alive. Manoharan also was working in the same establishment, where my son was working. Jose Joseph involved in the incident causing his death, while travelling in Electric train."

In the cross examination not even a suggestion was put to him to the effect that what the 1st respondent stated during his chief examination was not correct or that the deceased was not travelling in a train. There is also no suggestion whatsoever to the effect that the deceased died otherwise than while travelling in a train. Further, we find that in Annexure I application submitted by the 1st

respondent it is categorically stated that the immediately after the accident, one of the fellow passengers informed about the incident at Kasara Railway Station and thereafter, the police was informed by the station master. The appellant has not chosen to produce any evidence whatsoever. The least they could have done was to disprove the claim of the respondents by examining the station master of the Kasara Railway station if no such information regarding any railway accident was received by him and he had not informed the police about such an incident. The appellant has no such case also. The appellant has also no case that the deceased was not an employee of the National Garments at Bhandup in Mumbai and that he was not a regular commuter from Kasara to Kalyan for attending his work there.

5. The learned counsel for the appellant lays stress on the explanation to Section 124-A and submits that without producing a valid ticket for travelling by a train carrying passengers, the

respondents could not have effectively proved that their son died in an untoward incident in the course of working a railway. We are not impressed with this argument. First of all the explanation is only an inclusive explanation and nowhere in section 124-A it is stated that only if valid ticket is produced in proof of having travelled by a passenger train, the respondents could claim compensation. Moreover, it would be illogical to insist on the legal heirs of a deceased person to produce the ticket obtained by him for travelling in the railway especially when the deceased died a violent death and the legal heirs are far away from the site of the incident. All what the respondents need do is to prove by some evidence that their son was a bonafide passenger of a railway and his death was occasioned on account of an untoward incident in the course of working a railway. In this connection, the fact that it was the railway personnel who reached the spot after the accident and recovered the body and the belongings cannot be

lost sight of. We are satisfied that the respondents have succeeded in proving the same by adequate material on record.

6. In this connection, we may also note that the proceedings before the Railway Claims Tribunal is not akin to that of a civil court dealing with civil suits. On the other hand, the procedure and powers of the Claims Tribunal laid down in the Railway Tribunal Act, 1987, make it abundantly clear that the procedure before the Tribunal is summary in nature and the ordinary rules of evidence and procedure followed by the Civil Courts are not applicable to proceedings before it. Section 18 of the Railway Claims Act, 1987 prescribes the powers and procedure of the Tribunal. The same reads thus:

> "**18. Procedure and powers of Claims Tribunal.**- (1) The Claims Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Claims tribunal shall have powers to regulate its own procedure including the fixing of places and times of its enquiry.
>
> (2) The Claims Tribunal shall decide every application as expeditiously as possible and

ordinarily every application shall be decided on a perusal of documents, written representations and affidavits and after hearing such oral arguments as may be advanced.

(3) The Claims Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it *ex parte*;

(h) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;

(i) any other matter which may be prescribed."

The above shows that the powers of the Tribunal are not circumscribed by the Code of Civil Procedure and that strict rules of evidence under the Indian Evidence Act are not applicable to the proceedings before the Tribunal. Hence the material on record

accepted by the Tribunal are sufficient to satisfy the requirements under Section 124A and we do not find any infirmity in the course adopted by the Tribunal.

7. On a consideration of the above materials in its correct perspective, we are of opinion that the respondents have succeeded in proving that their son died in an untoward incident while travelling in a train as a bona fide passenger from Kasara to Kalyan. That being so, the respondents have become eligible for compensation as provided under Section 124-A of the Railways Act as has been awarded by the Tribunal. In the above circumstances, we do not find any merit in the appeal filed by the appellant and hence the same is dismissed in limine.

M.RAMACHANDRAN, JUDGE

sdk+ S.SIRI JAGAN, JUDGE